

13
ex A-13UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

TVS AUTOMOTIVE EUROPE LIMITED,

Plaintiff,

v.

DISC-LOCK INTERNATIONAL
CORPORATION,

Defendant.

Case: 2:08-cv-10406

Judge: Hood, Denise Page

Referral MJ: Majzoub, Mona K

Filed: 01-29-2008 At 09:25 AM

CMP TVS AUTO EUROPE V. DISC LOCK INTL (DA)

David J. Gass (P34582)
D. Andrew Portinga (P55804)
Miller Johnson
Attorneys for Plaintiff
250 Monroe Ave., N.W., Suite 800
P.O. Box 306
Grand Rapids, MI 49501-0306
(616) 831-1700
gassd@millerjohnson.com
portingaa@millerjohnson.com

COMPLAINT

Plaintiff, TVS Automotive Europe Limited ("TVS"), for its Complaint states:

1. This is an action for breach of contract.
2. Plaintiff, TVS, is a company duly incorporated in the United Kingdom, with its principal place of business in Sheffield, England. TVS supplies automotive components that are manufactured in India.
3. Defendant, DISC-LOCK International Corporation ("DISC-LOCK"), is a California corporation with its principal place of business in Redondo Beach, California. DISC-LOCK sells safety wheel nuts for trucks, trailers, and buses.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction under 28 USC §1332 because there is complete diversity of citizenship between the plaintiff and the defendant, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

5. Venue is proper in this District under 28 USC §1391 because a substantial part of the events or omissions giving rise to this action occurred in this District and because the defendant has conducted and continues to conduct business in the State of Michigan.

Facts

6. In 2005, the parties entered into a contract by which TVS was to supply to DISC-LOCK custom-manufactured hex pilot nuts, hex flange washers, and hot form cup washers ("Parts") (one of each Part together equals one "Set") in accordance with DISC-LOCK's drawings and specifications. The purchase order is attached as Exhibit A.

7. TVS was to deliver the Sets to DISC-LOCK F.O.B. at Chennai, India. DISC-LOCK then was responsible for shipping the Parts from India to Roseville, Michigan, where they were to be assembled into a safety wheel nut by or on behalf of DISC-LOCK and then sold to DISC-LOCK customers.

8. In May 2006, the parties further agreed that TVS would manufacture and sell to DISC-LOCK a total of 600,000 Sets at a price of a \$1.51 per Set. Terms included payment within 30 days of invoice.

9. The parties agreed that Parts were to be shipped at a rate of 50,000 Sets per month starting in June 2006.

10. The parties also agreed to waive claims for any delays occurring before June 2006.

11. In accordance with the parties' agreement, TVS delivered Sets to DISC-LOCK at a rate of approximately 50,000 Sets per month.

12. On February 13, 2007, DISC-LOCK cancelled the remaining shipments. By that time, TVS had shipped to DISC-LOCK 398,000 Sets.

13. In accordance with the parties' agreement, TVS sent to DISC-LOCK invoices for the Sets shipped at the agreed upon price.

14. While DISC-LOCK has made payments on some invoices, it is delinquent on others. As of the date of this Complaint, there are outstanding invoices of \$299,650. See Exhibit B.

15. In addition, at the time of cancellation, TVS had manufactured, or had begun to manufacture, for DISC-LOCK, 123,740 Sets, which have no alternative value because they are custom made for DISC-LOCK. Contractually, DISC-LOCK was obligated to purchase those Sets, but has failed to do so.

16. At \$1.51 per Set, the total price for those unshipped Sets is \$186,848.

17. While DISC-LOCK has repeatedly affirmed its obligation to pay all of TVS's outstanding invoices and has continued giving assurances to TVS that DISC-LOCK would pay those invoices in full, it has failed to make promised payments. The last payment made by DISC-LOCK to TVS (\$25,000) was on October 22, 2007.

Count I – Breach of Contract

18. TVS incorporates Paragraph 1 - 17.

19. Under the contract, the parties agreed that TVS would ship 600,000 Sets of Parts to DISC-LOCK at a price of \$1.51 per Set.

20. TVS has complied with the terms of the contract.

21. DISC-LOCK has failed to pay TVS's invoices as they have become due.

22. The outstanding balance on TVS's invoices is \$299,650, plus interest, costs, and attorney fees.

23. In addition, DISC-LOCK breached the contract by prematurely cancelling it, resulting in an additional loss to TVS of \$186,848.

WHEREFORE, TVS requests that Judgment be entered in its favor and against defendant in the amount of \$486,498, plus interest, costs, and attorney fees.

MILLER JOHNSON
Attorneys for Plaintiff, TVS Automotive Europe Limited

Dated: January 28, 2008

By 
David J. Gass (P34582)

D. Andrew Portinga (P55804)

Business Address:

250 Monroe Avenue, N.W., Suite 800

PO Box 306

Grand Rapids, Michigan 49501-0306

Telephone: (616) 831-1700

gassd@millerjohnson.com

portingaa@millerjohnson.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

TVS AUTOMOTIVE EUROPE LIMITED,

Plaintiff,

Civil Case No.

v.

HON.

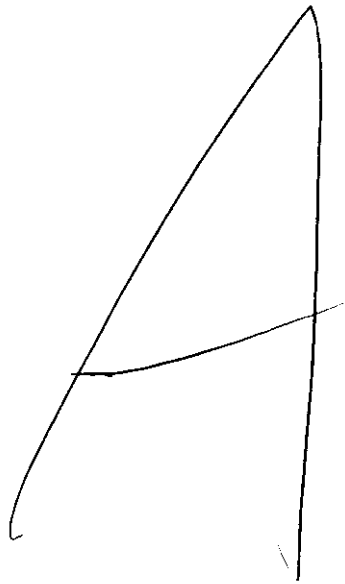
DISC-LOCK INTERNATIONAL
CORPORATION,

Defendant.

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INDEX TO EXHIBITS

Exhibit A	Purchase Order
Exhibit B	Chart of Outstanding Invoices



DISC-LOCK International
 1924 S. Pacific Coast Highway, Suite F
 Redondo Beach, CA 90277 USA
 Tel: 310-944-9335
 Fax: 310-944-9522

BLANKET PURCHASE ORDER # A310-R3

Confirming PO to: Avinash Shiva
 S. Mohan & M. Balasubramanian

Date: December 1, 2005

To: TVS Automotive Europe Limited, 5th Floor, Globe II Business Centre, 128
 Maltravers Road, Sheffield S2 5AZ, United Kingdom

Ship to: DISC-LOCK will advise Delivery Date: TBD Via: TBD

Term: Net 30 Days F.O.B. Chennai

* Note: Items 1,2 and 3 below equal one set. Price quoted and agreed upon by TVS and DISC-LOCK is US\$1,51 per set.

QUANTITY	UNIT	DESCRIPTION & DRAWING NUMBER
1. 600,000 (with 50,000 pc. Releases)	Pieces	M22X1.5 Hex Pilot Nut Per drawing #01X-22MM-HPN (formed, heat treated to HRC28-32, and tapped, no coating)
2. 600,000 (with 50,000 pc. Releases)	Pieces	M22 Hex Flange Washers Per drawing #02U-22MM-HFW and incorporating (3) below (no heat treating or coating)
3. 600,000 (with 50,000 pc. Releases)	Pieces	M22 Hot Formed Cup Washers Per drawing #03U-22MM-DCW (no heat treating or coating)

* PRICE PER 1,000 SETS - US\$1,510.00 ----- Total: US\$906,000.00

THIS PURCHASE ORDER IS CONTINGENT UPON:

1. INTERIM PPAP APPROVAL HAS BEEN GRANTED TO TVS TO SUPPLY 12,500 OF EACH COMPONENT FOR DISC-LOCK VISIT, DECEMBER, 2005 AT WHICH TIME A LEVEL 5 PPAP, CONTROL PLAN AUDIT AND REVIEW OF DISC-LOCK STANDARDS AND SPECIFICATIONS WILL BE CONDUCTED BY DISC-LOCK PERSONNEL OR ASSIGNED REPRESENTATIVES THEREOF.
2. UPON SUCCESSFUL CONCLUSION OF ITEM (1) INCLUDING ANY WRITTEN CORRECTIVE ACTIONS, ABOVE BLANKET PURCHASE ORDER WILL BE PUT

INTO EFFECT BY DISC-LOCK INTERNATIONAL. THIS PURCHASE ORDER CAN BE TERMINATED IF TVS FAILS TO CONFORM TO ALL DISC-LOCK INTERNATIONAL'S DRAWINGS AND SPECIFICATIONS ON PRODUCTION PRODUCT.

3. INCORPORATION OF THE FOLLOWING INTO THE HEX FLANGE WASHER COMPONENT:

No tool marks, free flow, laps, seams, folds or other discontinuities or other potential stress risers permissible

4. AGREEMENT AND COMPLIANCE WITH THE FOLLOWING:

CONFIDENTIALITY AGREEMENT

From: Disc-Lock International

To: T V S Automotive Europe Limited, 5th Floor, Globe II Business Centre, 128 Maltravers Road, Sheffield S2 5AZ, United Kingdom

Re: Supply of Disc-Lock Components Confidentiality Agreement

To whom it may concern:

Your company, TVS Automotive Europe Limited, will be supplying Disc-Lock components for worldwide sales. In order to supply the components, e.g. hex flange nut washer, hex pilot nut and cup washer Disc-Lock has provided all necessary standards and specifications to ensure compliance.

As a condition to furnishing you with this information, you agree that this information and any other information which the Company furnishes to you or your representatives or which you or your representatives obtain through this access (collectively, the "Evaluation Material") will be kept confidential.

You agree that the Standards and Specifications will not be used by you, your employees, affiliates, or your representatives (collectively, your "representatives") in any way detrimental to the Company. The Standards and Specifications will be treated as belonging to the Company, and shall not, without our prior written consent, be disclosed in any manner, in whole or in part, to anyone who is not one of your affiliates or representatives and does not have a need to know in order to manufacture the components.

You agree that you will not, and your representatives will not, disclose to anyone who is not a direct participant in the manufacturing of these components. If our relationship with you is terminated for any reason, you agree to return to the Company all Standards and Specifications and all copies, summaries, and notes of the contents or parts of this

material (regardless of who made them), without retaining any copies of any of this material.

No failure or delay by us in exercising any right, in whole or in part, shall operate as a waiver of any other right. This Agreement shall be governed by the internal laws of the State of California, United States of America.

It is further understood and agreed that money damages may not be a sufficient remedy for any breach of this Agreement by you and that the Company shall also be entitled to specific performance as a remedy for any such breach. These remedies shall not be deemed to be the exclusive remedies for your breach of this Agreement, but shall be in addition to all other remedies available at law or equity to the Company.

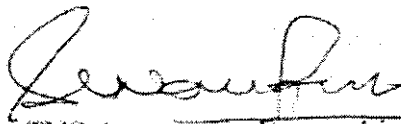
If you are in agreement with this, please sign and return one copy to the Company. It will then constitute our Agreement with respect to its subject matter.

Very truly yours,

Greg White, Vice President

December 1, 2005

AGREED:



TVS Automotive Europe Limited

DATE: 05.12.2005

B

TVS Automotive Europe Limited
Disc Lock Transaction Details

TVS inv. No.	TVS inv. Date	Sets shipped	Inv. amount in US Doll.	Payments received from Disc-Lock.
CI1060095	09/03/2006	3000		
CI1060096	09/03/2006	5500		
CI1060097	09/03/2006	4000		
CI1060128	05/04/2006	3500		
CI1060133	13/04/2006	10000		
CI1060134	13/04/2006	7000		
CI1060208	30/05/2006	20000		
CI1060262	04/07/2006	10000		
CI1060269	07/07/2006	10000		
CI1060278	17/07/2006	10000		
CI1060279	17/07/2006	10000		
CI1060307	08/08/2006	10000	\$15,100.00	
CI1060333	25/08/2006	20000		
CI1060335	25/08/2006	20000		
CI1060363	14/09/2006	20000	\$30,200.00	
CI1060381	26/09/2006	30000	\$45,300.00	
CI1060409	18/10/2006	25000	\$37,750.00	
CI1060414	20/10/2006	25000	\$37,750.00	
CI1060444	10/11/2006	25000		
CI1060463	21/11/2006	25000		
CI1060489	14/12/2006	25000	\$37,750.00	
CI1060492	19/12/2006	25000	\$37,750.00	
CI1070002	01/05/2007	25000	\$37,750.00	
CI1070005	01/10/2007	30000	\$45,300.00	
Total		398000	\$600,980.00	\$301,330.00

Outstanding	\$299,650.00
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Green colour indicates invoices settled

Yellow colour indicates invoices yet to be settled

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

TVS AUTOMOTIVE EUROPE LIMITED

(b) County of Residence of First Listed Plaintiff N/A - English corp.
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David J. Gass, Miller Johnson, 250 Monroe NW, Ste 800,
Grand Rapids MI 49503; 616-831-1700

DEFENDANTS

DISC-LOCK INTERNATIONAL CORPORATION

County of Residence of First Listed Defendant N/A - California
(IN U.S. PLAINTIFF CASES ONLY)

Case: 2:08-cv-10406

Judge: Hood, Denise Page

Referral MJ: Majzoub, Mona K

Filed: 01-29-2008 At 09:25 AM

CMP TVS AUTO EUROPE V. DISC LOCK IN
TL (DA)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CIT

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC Section 1332

Brief description of cause:
Breach of Contract

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 486,498.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/28/08

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

If yes, give the following information:

☐ No

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☐ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
